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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT TACOMA

9 DENVER G. SMITH,

10 Petitioner,

11 v.

12 ROB MCKENNA and TIMOTHY
13 WENGLER,

14 Respondents.

Case No. C08-5349BHS

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16
17 ORDER OVERRULING
18 PLAINTIFF'S OBJECTIONS AND
19 ADOPTING REPORT AND
20 RECOMMENDATION

21 This matter comes before the Court on the Report and Recommendation of the
22 Honorable Karen L. Strombom, United States Magistrate Judge (Dkt. 23), and Petitioner's
23 Objections to the Report and Recommendation (Dkt. 24).

24 Judge Strombom recommends that the Court (1) re-refer this matter for additional
25 briefing on Petitioner's first claim for relief, Dkt. 23 at 11, and (2) dismiss Petitioner's
26 second through ninth claims because they are unexhausted and procedurally barred, *id.* at
27 12-17. Petitioner objects to this recommendation because, under the "Cumulative Error
28 Doctrine," he sufficiently asserted his claims to the state courts. Dkt. 24 at 2 citing *Daye v.
Attorney General of State of N.Y.*, 696 F.2d 186 (2nd Cir. 1982). The Court disagrees and,
after review of Petitioner's state court personal restraint petitions, adopts Judge Strombom's
finding that he made "no reference to any specific federal constitutional guarantee or federal
case law in support of the relief he [sought]." Dkt. 23 at 13. Therefore, the Court overrules
Petitioner's objections.

29 ORDER – 1

The Court having considered the Report and Recommendation, Plaintiff's objections, and the remaining record, does hereby find and order:

- (1) The Court **OVERRULES** Plaintiff's Objections;
 - (2) The Court adopts the Report and Recommendation; and
 - (3) Petitioner's second, third, fourth, fifth, sixth, seventh, eighth, and ninth claims for relief are **DISMISSED** and this action is **RE-REFERRED** for further briefing on and consideration of Petitioner's first claim for federal habeas relief.

DATED this 30th day of April, 2009.



BENJAMIN H. SETTLE
United States District Judge